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FISCAL IMPACT STATEMENT

LS 7595

BILL NUMBER: SB 572

NOTE PREPARED: Feb 23, 2009

BILL AMENDED: Feb 19, 2009

SUBJECT: Mortgage Loan Creditors and Originators.

FIRST AUTHOR: Sen. Paul

FIRST SPONSOR: Rep. Fry

BILL STATUS: As Passed Senate

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: The bill makes various changes to the laws concerning licensing residential mortgage loan creditors and originators to comply with requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

The bill repeals provisions being superseded by this bill, and it repeals provisions under the Uniform Consumer Credit Code concerning the following: (1) A definition index. (2) Revocations of certain licenses.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Summary-* The Department of Financial Institutions (DFI) would have increased expenditures to carry out the provisions of the bill. Presumably, the expenditures would be offset by revenue from fees set by the DFI on mortgage loan originators and licensed creditors of first lien mortgages and subordinate lien mortgages.

Potential Licensees- With the continual restructuring of the financial sector of the national economy, the number of potential entities that could require a license under this provision is indeterminable. The DFI would have to find out the number of entities that would require licensure, proceed with licensure, and begin inspections of new license holders.

Staff- The DFI would have the ability under this bill to hire or retain additional staff (including attorneys) primarily for enforcement matters. The amount of expenditure this provision would require is indeterminable and would depend on the number of actions the DFI had to take to enforce the provisions within the bill.

Courses of Action- The bill would allow the DFI to initiate civil proceedings against a violator of the bill's provisions. The DFI could also suspend or revoke a license, assess civil penalties, or order restitution.

(Revised) *NMLSR-* The bill would place the Nationwide Mortgage Licensing System and Registry (NMLSR) as the automated central licensing system and repository to processes applications and renewals. The Director of the DFI (DODFI) could request a national criminal history background check of an applicant. If so, the applicant would have to submit fingerprints to either the NMLSR, the Indiana State Police (ISP), or the DFI as the DODFI directs the applicant. The DODFI would be required to ensure NMLSR processing fees are reasonable.

Explanation of State Revenues: *Civil Penalties: Mortgage Loan Originators-* A court could assign a civil penalty of not more than \$5,000 for willful violations of the bill by a mortgage loan originator. The DFI, in addition, could assess a civil penalty on the violator of no more than \$10,000 for each violation.

UCC Violations- The bill adds 15 acts that violate the Uniform Consumer Credit Code (UCC), including: directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders; engaging in any unfair or deceptive practice; and obtaining property by fraud or misrepresentation. These violations could be punishable via the methods and civil penalties as above for mortgage loan originators.

Civil penalties assessed by the DODFI are placed in the Financial Institutions Fund (FIF). Civil penalties imposed by the UCC generally go to the state General Fund or the FIF.

Criminal Provisions: A person that engages in making subordinate lien mortgage transactions without a license would commit a Class A misdemeanor under current UCC law. Depository institutions (DI), federally regulated DI subsidiaries, Farm Credit Administration (FCA) regulated institutions, or persons that have been licensed to make subordinate lien mortgages by the DFI would not be subject to this criminal provision.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

National Criminal History Background Check (NCHB)- As a result of the bill, more national criminal background checks could occur, which would increase state revenues. National criminal history background checks cost \$32.25. Of the \$32.25, \$17.25 is transferred to the federal government, and the remaining \$15 is deposited into the state General Fund.

Explanation of Local Expenditures: *Criminal Provisions:* A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Criminal Provisions:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: DFI.

Local Agencies Affected: Circuit or superior courts.

Information Sources: *Indiana Handbook of Taxes, Revenues, and Appropriations*; John Schoeder, Chief Counsel and Deputy Director DFI.

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